

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

RODOLFO RODRIGUEZ,

Plaintiff,

vs.

No. CV 21-00387 JB/JHR

STATE OF NEW MEXICO,

et al.,

Defendants.

**ORDER TO SHOW CAUSE**

**THIS MATTER** is before the Court on the Application to Proceed in District Court Without Prepaying Fees or Costs filed by Plaintiff, Rodolfo Rodriguez (Doc. 7) and the Court's May 26, 2021 Second Order to Cure Deficiency (Doc. 8). Plaintiff Rodriguez has failed to comply with the May 26, 2021 Order and failed to prosecute this proceeding. Therefore, the Court will require Plaintiff Rodriguez to show cause why this case should not be dismissed under Fed. R. Civ. P. 41(b).

On April 28, 2021, the Court entered an Order to Cure Deficiency, requiring Plaintiff to file an Application to Proceed in proper form within 30 days. (Doc. 4). Plaintiff submitted his Application to Proceed in District Court Without Prepaying Fees or Costs on May 24, 2021. (Doc.7). The Court determined that Plaintiff's Prisoner's Motion was missing the required certified copy of Plaintiff's inmate account statement for the 6-month period immediately preceding this filing. See 28 U.S.C. § 1915(a)(2). Therefore, the Court entered a Second Order to Cure Deficiency, requiring Plaintiff Rodriguez to provide inmate account statements for the 6-month period preceding filing of this case within 30 days. (Doc. 8). The Second Order to Cure

Deficiency also notified Plaintiff that, if he did not provide the required inmate account statements within 30 days, the Court could dismiss this proceeding without further notice. (Doc. 8 at 2). More than 30 days has elapsed since entry of the Court's May 26, 2021 Second Order to Cure Deficiency and Plaintiff has not provided the required statement or responded to the Court's Order.

Section 1915 states:

"A prisoner seeking to bring a civil action . . . shall submit a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint. . ."

28 U.S.C. § 1915(a)(2). The form Application to Proceed provided by the Court and submitted by Plaintiff states:

"I have attached to this document a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances *during* the last six months for any institutional account in my name. I am also submitting a similar statement for any other institution where I was incarcerated during the last six months."

(Doc.7 at 1) (emphasis added).

Plaintiff did not submit the certified inmate account statement or statements as required by § 1915(a)(2) and the Court's May 26, 2021 Order. Plaintiff claimed that he cannot submit the account statement because he has only been incarcerated at "Luna" for 3 months. (Doc. 7 at 1). Because Plaintiff Rodriguez is a frequent litigant in this Court, the Court is aware that Plaintiff has been incarcerated at facilities other than the Luna County Detention Center during the past six months. *See* CV 19-00111 MV/SMV, CV 20-01227 WJ/KBM, CV 20-01228 REB, CV 21-00055 WJ/JFR, and CR 18-01568 WJ. As the Court advised Rodriguez, he is obligated to provide the account statement covering the 3-month period at "Luna" and he is also obligated to provide account statements for any other institutions where he has been incarcerated during the six-month

period preceding filing of this case. 28 U.S.C. § 1915(a)(2). (Doc. 8). Plaintiff Rodriguez has failed to comply with the statute and the Court's Order.

The Court may dismiss an action under Fed. R. Civ. P. 41(b) for failure to prosecute, to comply with the rules of civil procedure, or to comply with court orders. *See Olsen v. Mapes*, 333 F.3d 1199, 1204, n.3 (10<sup>th</sup> Cir. 2003). The Court will require Plaintiff Rodriguez to show cause, within 30 days of entry of this Order, why this action should not be dismissed for non-compliance with the Court's May 26, 2021 Order and failure to prosecute. Failure to show cause or otherwise respond to this Order will result in dismissal of this case without further notice.

IT IS ORDERED that Plaintiff Rodolfo Rodriguez show cause, within 30 days of entry of this Order, why this case should not be dismissed for failure to comply with the Court's May 26, 2021 Order and failure to prosecute this proceeding.

  
UNITED STATES MAGISTRATE JUDGE